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March 16, 2020

**VIA CM/ECF**

The Honorable Margo K. Brodie  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: *Genius Media Group Inc. v. Google LLC and LyricFind, Inc.*  
No. 1:19-cv-07279-MKB-VMS (E.D.N.Y.)**

Dear Judge Brodie:

We represent Defendant Google LLC (“Google”), and write on behalf of both Google and Defendant LyricFind, Inc. (“LyricFind”). We hereby notify the Court of supplemental authority pertaining to Plaintiff Genius Media Group Inc.’s (“Genius”) pending Motion to Remand. Briefing on the motion concluded recently on March 11, 2020.

On February 27, 2020—one day before Defendants’ submission of their joint opposition brief—Judge Alvin K. Hellerstein issued the attached Order in *Adina’s Jewels, Inc. v. Shashi, Inc.*, No. 1:19-cv-08511-AKH, 2020 WL 950752 (S.D.N.Y.). See Exhibit A.

The plaintiff in *Adina* filed a complaint in state court alleging that the defendant ordered jewelry from the plaintiff’s website, created knock offs, and sold them as its own jewelry. The claims at issue included two of those asserted by Genius in this case: unfair competition and unjust enrichment. *Id.* at \*1.

Following removal, Judge Hellerstein denied plaintiff’s motion to remand and dismissed the state law claims as preempted by federal law, because “[u]nder *Adina*’s theory of this case, the acts of copying and unauthorized use trigger Shashi’s liability. This neatly falls within the bounds of the infringement protection offered by § 106 of the Copyright Act.” *Id.* at \*3.

Here, Genius has argued that its claims avoid preemption because it alleges “deception” and “bad faith” by the Defendants. See Dkt. 15-1 at 18-22; Dkt. 17 at 4-5, 7. Judge Hellerstein addressed and rejected the same argument in *Adina*:

Nor does the fact that *Adina* alleges that Shashi copied its jewelry in a “deceptive” manner ... meaningfully change the picture. Shashi’s purported bad faith in

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copying does not alter the reality that the harm in this case stems wholly from the alleged copying.

Ex. A at \*4 (citing, *e.g.*, *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 306 (2d Cir. 2004) (“Awareness or intent ... are not extra elements that make a state law claim qualitatively different.”)).

As Defendants explained in their opposition brief, this is consistent with every other court in the Second Circuit to address the same issue. *See* Dkt. 16 at 20-25.

Respectfully submitted,

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s/ Jason Mollick

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Enclosure

cc: All Counsel of Record (via CM/ECF)